

REMARKS

Claims 1-5, 26, and 28 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-14, 16, 18-23, 25-26, and 28 stand rejected under 35 U.S.C. § 101 for not appearing to provide a useful, concrete, and tangible result. Claims 1-14, 16, 18-23, 25-26, and 28 also stand rejected under 35 U.S.C. § 101 as they appear to be directed towards a data structure, per se. Claim 1 stands rejected under 35 U.S.C. § 103(a) as being anticipated by United States Patent Number 6,498,038 to Berkowitz et al. (hereinafter “Berkowitz”) in view of United States Patent Application Publication Number 2004,0254964 by Kodama et al. (hereinafter “Kodama”). Claims 2-14, 16, 18-23, 25-26, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berkowitz and Kodama in view of United States Patent Number 6,934,822 to Armangau et al. (hereinafter “Armangau”).

For the Examiner’s convenience and reference, Applicants’ remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references.

Applicants thank the examiner for the telephone interview of July 13, 2006. As a result of the interview, Applicants have amended the claims as discussed to satisfy the requirements of 35 U.S.C. § 101. The amendments will be discussed hereafter in more detail. In addition, the Applicants have amended the independent claims to include in the limitation of a redundancy

level indicator, "...the redundancy level indicator configured to select a redundancy in the range of no redundancy to a RAID level 50 redundancy..." as discussed during the interview. Claim 1 as amended. See also claims 6, 13, 16, 23, and 26. The amendment is fully supported by the specification, which discloses "The redundancy indicator 630 indicates the level of redundancy required for the target volume. In one embodiment, the redundancy levels range from JBOD (no redundancy) to RAID level 50." Page 14, Lines 8-10 as amended. Please note that the phrase "RAID 50" used during the telephone interview is changed to "RAID level 50" to more precisely follow the specification. The paragraph beginning on line 8 of page 14 is amended to remove a redundant "to."

Response to rejections of claims under 35 U.S.C. § 101

Claims 1-5, 26, and 28 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse the rejection.

The Commissioner has stated "...that computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101 and must be examined under 35 U.S.C. § 102 and 103." *In re Beauregard*, 53 F.3d 1583, 1584 (Fed. Cir. 1995). Applicants have amended claims 1-5, 26, and 28 to claim "...[A] computer program product comprising a computer useable medium having a computer readable program, wherein the computer readable program when executed on a computer causes the computer to..." Claim 1 as amended. As amended, the claimed computer program product performs the function of causing the computer to perform a process. Applicants therefore assert that as amended, claims

1-5, 26, and 28 claim statutory subject matter under 35 U.S.C. § 101.

Claims 1-14, 16, 18-23, 25-26, and 28 stand rejected under 35 U.S.C. § 101 for not appearing to provide a useful, concrete, and tangible result. Claims 1-14, 16, 18-23, 25-26, and 28 also stand rejected under 35 U.S.C. § 101 as they appear to be directed towards a data structure, per se. Claims 1, 6, 13, 16, 23, and 26 are amended with the limitation “...execute a plurality of fast replications operations as specified by the snapshot set...” Claim 1 as amended. See also claims 6, 13, 16, 23, and 26 as amended. Applicants have also removed the phrase “data field.”

Applicants submit that executing fast replications operations are useful, concrete, and tangible and are not merely directed towards a data structure. Therefore, Applicants assert that claims 1, 6, 13, 16, 23, and 26 are allowable as directed to allowable subject matter.

Response to rejections of claims under 35 U.S.C. § 103.

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being anticipated by United States Patent Number 6,498,038 to Berkowitz in view of Kodama. Claims 2-14, 16, 18-23, 25-26, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berkowitz and Kodama in view of Armangau. Applicants respectfully traverse this rejection.

As discussed during the telephone interview, claims 1, 6, 13, 16, 23, and 26 are amended to include the limitation of a redundancy level indicator, “...the redundancy level indicator configured to select a redundancy in the range of no redundancy to a RAID level 50 redundancy...” Claim 1 as amended. See also claims 6, 13, 16, 23, and 26. As neither

Berkowitz, Kodama, nor Armangau disclose a redundancy level indicator configured to select a redundancy in the range of no redundancy to a RAID level 50 redundancy, Applicants assert that claims 1, 6, 13, 16, 23, and 26 are allowable. Applicants further submit that claims 2-5, 8-12, 14, 18-22, 25, and 28 are allowable as depending from allowable claims.

If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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